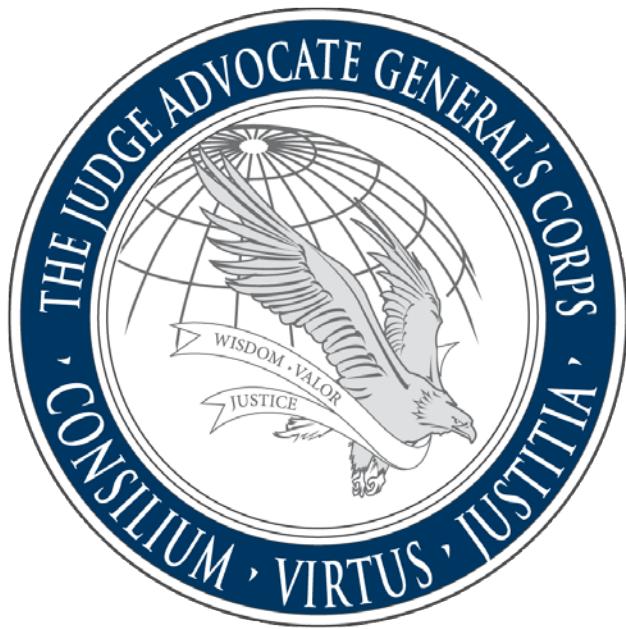


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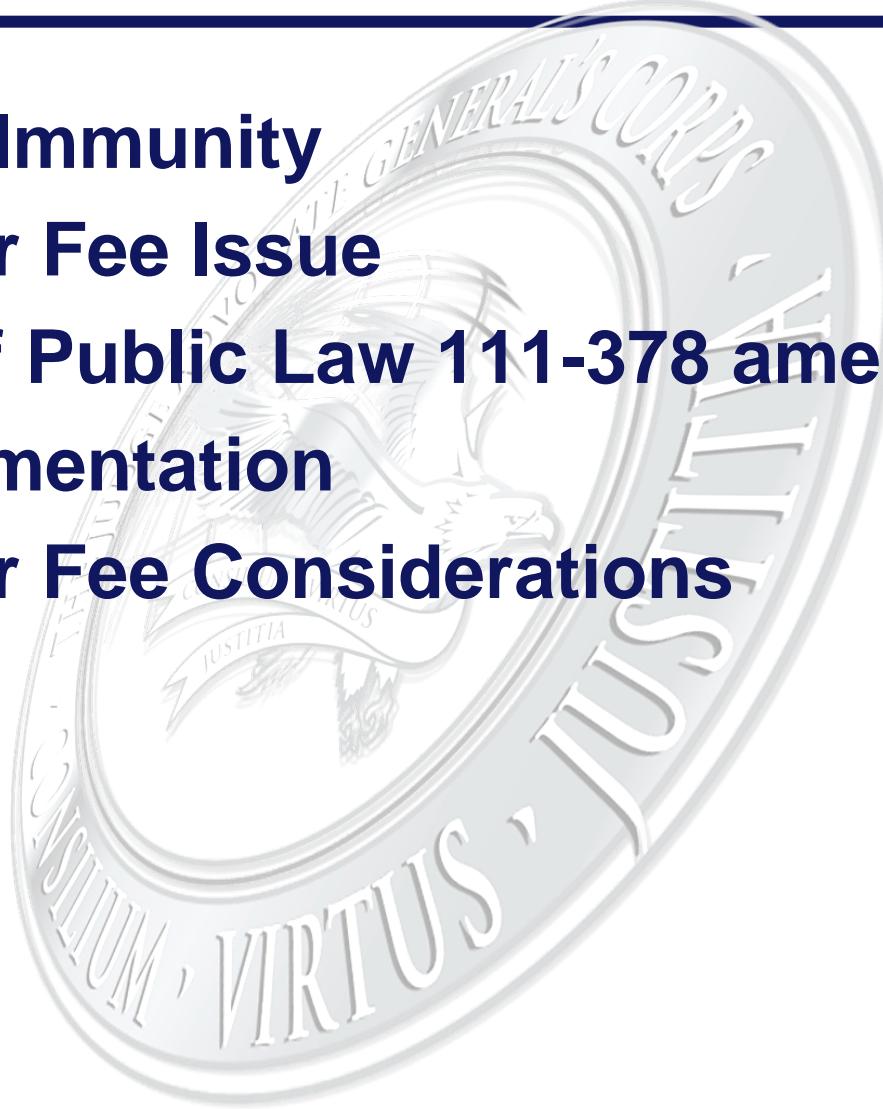
## **PL 111-378 and Payment of CWA Stormwater Fees**



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|--|------------------------------------|---|---|----------------------------------|---------------------------------|
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- Sovereign Immunity
- Stormwater Fee Issue
- Passage of Public Law 111-378 amending CWA
- DoD Implementation
- Stormwater Fee Considerations





# *Sovereign Immunity and the Clean Water Act (CWA)*

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- Federal sovereign immunity – the United States is only subject to those laws that Congress consents to
- CWA limited waiver of sovereign immunity
  - Federal facilities must comply with all Federal, state, interstate, and local water pollution control and abatement requirements
  - Includes payment of reasonable service charges





# *Development of Stormwater Fees Issue*

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- Local government assessment of stormwater fees against those within jurisdiction (often based on impervious surface calculations)
  
- Stormwater fees may create fee/tax and fiscal law issues for federal agencies
  
- Government Accountability Office (GAO) opinions on Washington, DC stormwater fees

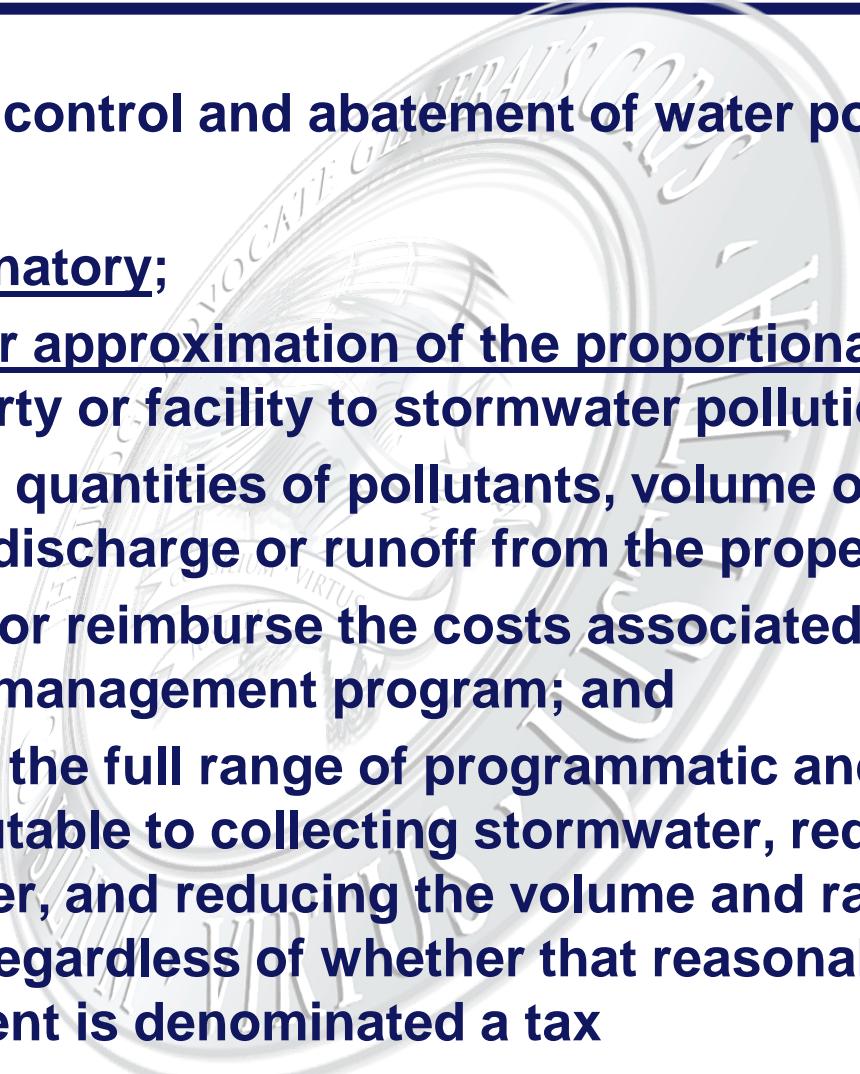




# *Public Law 111-378*

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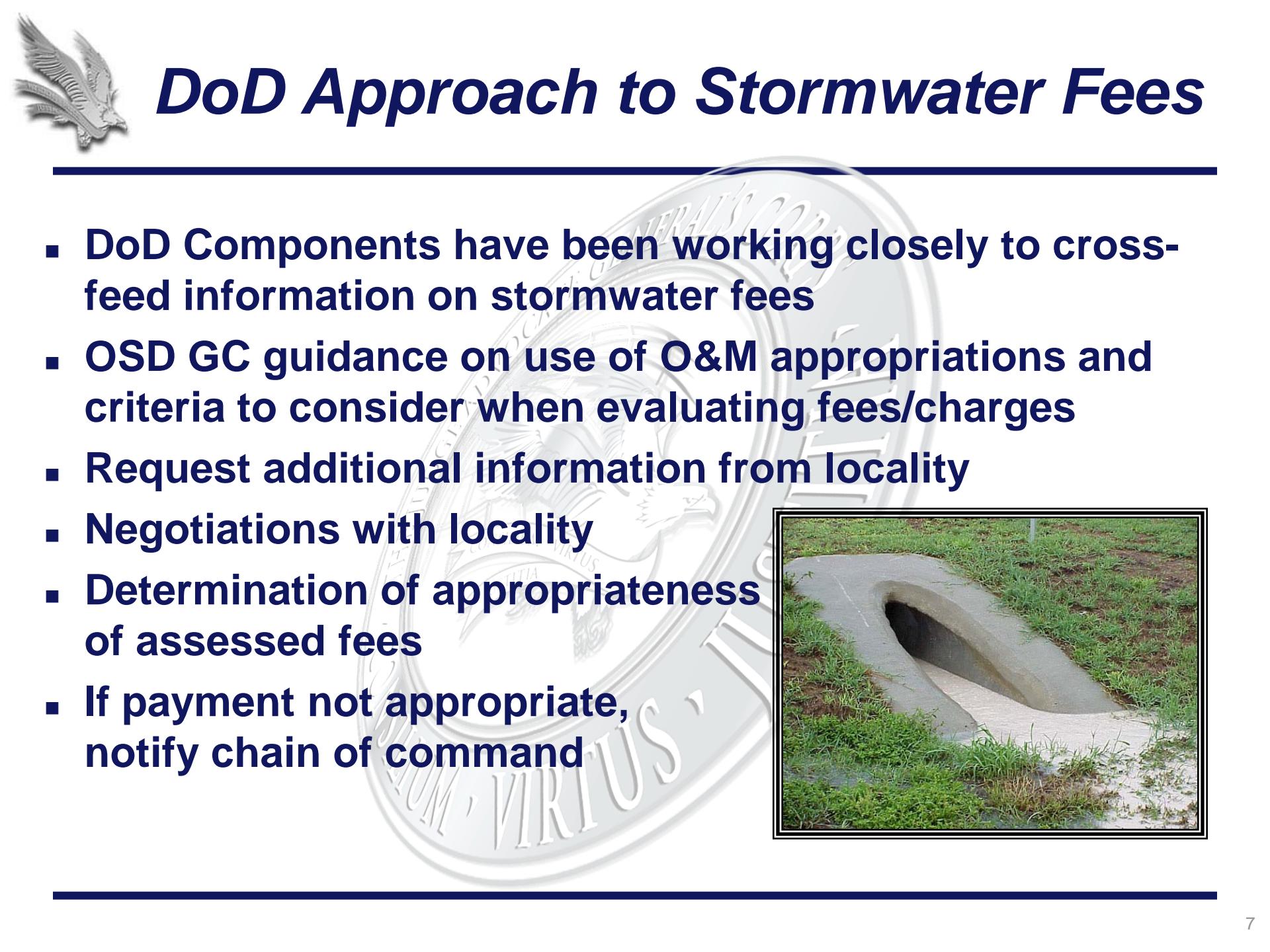
- Public Law 111-378 signed 4 Jan 2011
  - “Federal Responsibility To Pay for Stormwater Programs”
- Amendment to CWA § 313 (“Federal Facilities Pollution Control”)
- Revised waiver of sovereign immunity to allow payment of certain stormwater fees as reasonable service charges
- O&M funds may be used to pay appropriate fees (after DOJ/OLC opinion)



# *Elements of CWA § 313(c) Reasonable Service Charge*

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- relate to the control and abatement of water pollution;
- reasonable;
- nondiscriminatory;
- based on fair approximation of the proportionate contribution of the property or facility to stormwater pollution;
- measured in quantities of pollutants, volume or rate of stormwater discharge or runoff from the property or facility;
- used to pay or reimburse the costs associated with any stormwater management program; and
- may include the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge; regardless of whether that reasonable fee, charge, or assessment is denominated a tax



# **DoD Approach to Stormwater Fees**

- DoD Components have been working closely to cross-feed information on stormwater fees
- OSD GC guidance on use of O&M appropriations and criteria to consider when evaluating fees/charges
- Request additional information from locality
- Negotiations with locality
- Determination of appropriateness of assessed fees
- If payment not appropriate, notify chain of command





# *Considerations in Analysis of Stormwater Fees*

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- Is the DoD installation regulated under a Municipal Separate Storm Sewer System (MS4) Permit?
- Is all property in the jurisdiction subject to fees and are fees calculated similarly?
- For what purpose are the proceeds of the fees used?
- How is the fee calculated?
- To what extent does the installation contribute stormwater to the locality's stormwater system?
- Are there credits/reductions available for stormwater management practices at the DoD installation?



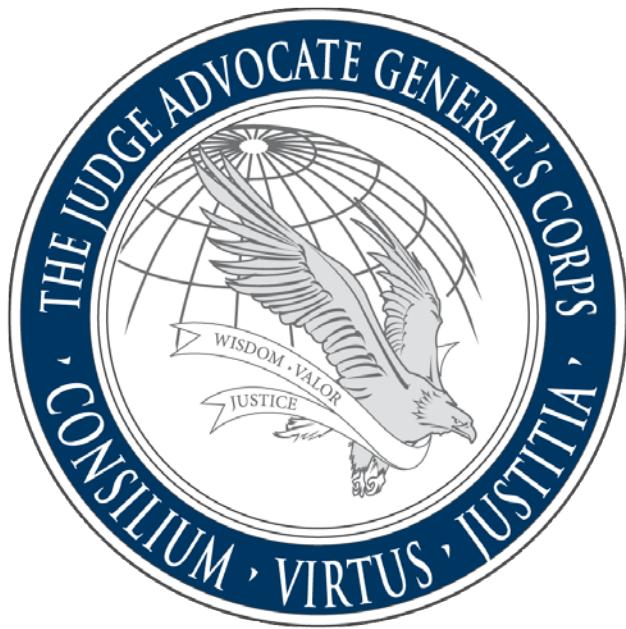
# Summary

- Amendment to CWA waives sovereign immunity allowing payment of certain reasonable stormwater fees by federal agencies
- Analysis of fees is fact-specific based on unique installation stormwater characteristics/management and locality fee assessment mechanism
- Communication with the locality will be key

# ***Environment, Energy Security & Sustainability Symposium***

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## **Questions?**



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